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79-112

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978

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No. 78-112

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JAMES H. COUNTRYMAN

Petitioner,

vs.

THE STATE OF TEXAS AND THE

STATE FARM INSURANCE COMPANY

Respondents.

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On Petition for Writ of Certiorari to

the United States Court of Appeals

for the Fifth Circuit

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# PETITION FOR REHEARING

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PETITION FOR REHEARING

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Petitioner presents his petition for a rehearing of this Court's order dated October 1, 1979, denying the petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit, and, in support thereof, respectfully shows:

GROUNDS FOR REHEARING

PART 1. The Constitution of the United States, consisting of a Preamble and VII Articles, was adopted on July 2, 1788, and went into effect on March 4, 1789, Each Article is divided into numbered Sections and Clauses. Articles I, II and III established, respectively, the Legislative, The Executive and the Judicial powers of the United States.

PART 2. For the purposes of this Application for Rehearing, we will be concerned with Article III, Section 2, Clause 1. and the Eleventh Amendment which was passed by Congress on March 5, 1794, and Ratified January 8, 1798. Article III, Sec.



2, Cl. 1 is as follows:

> "The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority;- to all cases affecting ambassadors, other public ministers and consuls;- to all cases of admiralty to controversies to which the United States shall be a party;- to controversies between two or more States;- between a State and citizens of another State;- between citizens of different States;- between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States citizens or subjects."

PART 3. The first case to reach the Supreme Court of the United States to test the constitutionalality of Sec. 2, Cl. 1 of Article III, was the case of Chisholm, Executor, v. Georgia, reported in 2 Dallas, 419. At that time, the Supreme Court consisted of five justices. They were, Mr. John Jay, Chief Justice, and Associate Justices Mr. John Rutledge, Mr. James Wilson, Mr. John Blair, and Mr. James Iredell.

PART 4. Chisholm, Executor, brought an action of assumpsit against the State of Georgia. When the case went before the Court for considereation, counsel for the State of Georgia made a protest in writing against the Court's taking jurisdiction of the case, but declined to argue the question. The sole question at issue was whether a citizen can invoke the jurisdiction of a United States Court in a state in which he does not have citizenship, something one is permitted to do under Section 2, Clause 1, of Article III of the Constitution as quoted above. The Court was divided 4 to 1 in upholding the validity of Chisholm's suit, with the Chief Justice and three associate justices writing separate opinions, and Associate Justice Iradell writing a dissenting opinion.

PART 5. The decision in the Chisholm case created much excitment, and in two days after it was announced the Eleventh Amendment was



offered in Congress, but it was not ratified until January 8, 1798. Though the Amendment is couched in the plainest of language consisting of 43 words, it has been the bewilderment of the Congress and courts unceasingly. First, it might be asked: What effect did it have on Section 2, Clause 1 of Article III of the Constitution? The answer is clear:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State."

PART 6. It seems clear, therefore, that the only effect the amendment had on Article III of the Constitution was to abrogate that proision which permits a citizen to invoke the jurisdiction of a United States Court to bring into that court, as a defendant, a State of the Union of which he is not a citizens.

PART 7. The words diverse, or diversity, as pertaining to the citus of one's place of residence, and affecting his right to invoke the jurisdiction of a Federal court to enforce his consitutional rights, are not mentioned in either Article III of the Constitution, or in the Eleventh Amendment.

It is most difficult to believe that the founders of this Republic would write into the Constitution any provision which would deny access to the courts because of insurmountable difficulties involving the places of the litigants' abode, and the amount of money, or the value of the things in litigation.

PART 8. It seems that a lively difference of opinion prevails between Mr. Cook, and Mr. Feldt in reference to the question of diversity, since the latter cited the case of Treinies v. Sunshine Mining Co., 308 U.S. 66 (1939), but Mr. Cook failed to give



that case accreditation. Mr. Feldt made a brief statement concerning what he thought the Treinies case held, but he must be in error, for Mr. Justice Reed, who wrote the opinion in that case, said nothing that justified Mr. Feldt's views. Here is what he said:

> "In order for "diversity" to exist as a basis for Federal Court jurisdiction, there must be complete diversity of citizenship of the parties; that is, the Petitioner cannot be a citizen of the same state as any of the Respondents."

This is what Mr. Justice Reed said in the Treinies case:

> "The complainant is a proper party for the determination of the controversy between the adverse claimants, citizens of different states. Their controversity could have been settled by litigation between them in the Federal Courts. Under similar circumstances as to parties, this Court ruled that a removal of separable controversies to the Federal Court was permissible even though a proper defendant was a citizen of the same state as the plaintiff."

PART 9. In the Treinies case, supra, the question of jurisdiction was discussed under

headnote 3, where it is said:

> "Jurisdiction.--Before considering the question raised by the petition for certiorari, the jurisdiction of the Federal court under the Act of January 20, 1936, must be determined. As this issue affects the jurisdiction of this Court, it is raised on its own motion."

No one can doubt the soundness of this rule, but can it apply to every case with the same force and effect. Petitioner respectfully pleads for a modified view:

Under date of July 24, 1979, the office of the Clerk of the Supreme Court notified Petitioner that the petition for writ of certiorari in this case was entered upon the docket of the Court on April 12, 1979. Opposing counsel were given proper notices of the docketing of the case, and each of them respectively, filed Briefs in Opposition to the writ.

PART 10. On page 8 of Mr. Feldt's Brief in Reply to Petition for Writ of Certiorari, he attempts to show that there are two



State Farm Insurance Companies, and it so happens that the one which insured Petitioner has its residence in the State of Texas. This is also the liturgy which is used by Mr. Cook to regale the Court. They failed to call the Court's attention to the statement hereto attached as Exhibit A, dated 4-20-76, issued in the name of the "STATE FARM INSURANCE Home Offices, Bloomington, Illinois," and referring to Policy Number 9616 418-F14-53A, which was the identical automobile insurance policy that was issued to the Petitioner and upon which this suit was instituted.

PETITIONER'S EXHIBIT A

STATE FARM INSURANCE

Home Offices, Bloomington, Illinois

| DATE | POLICY NUMBER | AGENT |
|---|---|---|
| 4-20-76 | 9616 418-F14-53A | H D Copeland 3271 |

Countryman, James H.
1700 N. Graham
Odessa, TX 79760

Dear Policyh ar:
Information within a Consumer Report furnished by:

Texas Department of Publis Safety

Austin, Texas

has influenced our decision to increase the charge for your insurance.
Your next billing will reflect this change. If additional information is desired, contact your agent.
Effective 6-14-76

James - Speed - 7-25-74

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PETITIONER'S EXHIBIT A



PART 11. After Respondents received notice that the petition for writ of certiorari had been entered upon the docket of the Court, each of the Respondents filed a Brief In Opposition. Upon reviewing these documents it was observed that each of them was saturated with numerous statements and innuendoes, none of which was supported by even a scintilla of evidence, but all were in derogation of the Petitioner. When the District Court and the Court of Appeals agreed with the Respondents that it was unlawful to reveal the facts in the case, was not that a denial of justice?

PART 12. When this Court dismissed the petition for certiorari after receiving Respondents' Briefs in Opposition, without according Petitioner an opportunity to reply to the many inaccurate and unsubstantiated allegations alleged against him, was not that a denial of due process of law? The fact being that on the day

Petitioner received notice that his petition for a writ of certiorari had been denied he was in the process of mailing his Reply Brief to the Court and to the attorneys for the Respondents, and the time for filing such Brief had not then expired.

PART 13. Since the petition for writ of certiorari was denied while Petitioner was in process of completing and mailing his reply to the contumelious contents of the State of Texas' "BRIEF IN OPPOSITION," and the State Farm Insurance Company's "GROUNDS FOR OPPOSITION OF THE PETITION," Petitioner begs leave of the Court to answer a few of the many inaccuracies which appear in Respondents' Briefs.

Page 3, Texas Brief: At no time has Petitioner ever said or contended that Congress has no authority to restrict the jurisdiction of the inferior Federal courts. What



Congress can give, it can take away. The petition simply asked the Court to declare the act of Congress limiting the jurisdiction of inferior Federal courts to cases where more than $10,000.00 in amount or value was involved, to be unconstitutional. In the penultimate paragraph of page 4 of this brief, the writer is transmitting through the receiving end of the telephone.

Page 5, Texas Brief: It is not true, as is asserted in the second paragraph of this page, that petitioner attempts to substitute unconstitutionality for jurisdiction. Here, Civil rights are involved, and in such cases it is not necessary to allege any particular amount of money or value to be involved.

PART 14. The attorney for the State Farm Insurance Company, in "GROUNDS FOR OPPOSITION OF THE PETITION", named 27 case authorities, of which apparently, 16 were district court, or Court of Appeals Decisions, and 11 United States Supreme Court decisions.

The Texas Brief cited 10 case authorities, of which apparently, 8 were Supreme Court decisions, and 2 District or Court of Appeals decisions.

However, not one of the cases cited was decisive of the question of double jeopardy as it is involved in this case, and not one of them totally supports the many faceted issues that the Respondents have lugged in, to confuse the real issues in the case.

Pages 8-11. State Farm Brief. Mr. Feldt has much to say about the dual organizations of the State Farm Insurance Company and the State Farm County Mutual Insurance Company, but neither Respondent has made any attempt to explain just why that is so. If the two lower courts had not held that it was unlawful for the facts involving the operations of these Respondents to be revealed before a jury, evidence would have been introduced to prove the nature of their operations.



However, in their pleadings, and otherwise, the Respondents have confessed to some of the results of their dual operations. One is that age, and not competence and capability is the criterion for determining who must be relegated to the State Farm Mutual member of the team, and here, those who are so unfortunate as to be assigned to this caste must pay a higher premium rate on their insurance, and if they are so unfortunate as to be made to pay a traffic fine they must pay a surcharge on their insurance for three years.

Those who are fortunate enough to make the higher caste, pay less premiums on their insurance, and are exempt from the payment of surcharges for traffic violations. Is this not self-confessed discrimination?

CERTIFICATE OF COUNSEL

I, James H. Countryman, counsel for the within named Petitioner, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 58, subdivision 2, of the Rules of this Court, to the best of my knowledge and understanding.

James H. Countryman

Counsel for Petitioner



CONCLUSION

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that, upon further consideration, writ of certiorari issue to the United States Court of Appeals for the Fifth Circuit.

James H. Countryman

Council for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that forty copies of the within and foregoing Application for rehearing of the order denying the Petition for Writ of Certiorari entered on the 1st day of October, 1979 in case Number 79-112, have been mailed to the Clerk of the Supreme Court of the United States, and that three copies of the same foregoing Application for Rehearing were deposited in the United States Mail, postage prepaid, addressed to each of the attorneys of record for the Respondents' Mr. Harrell Feldt, P.O. Box 1540 Midland, Texas, 79702, and Mr. John Rowland Cook, P.O. Box 12548, Capitol Station, Austin, Texas (512) 475-4481.

This the 26th day of October, 1979.

James H. Countryman

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